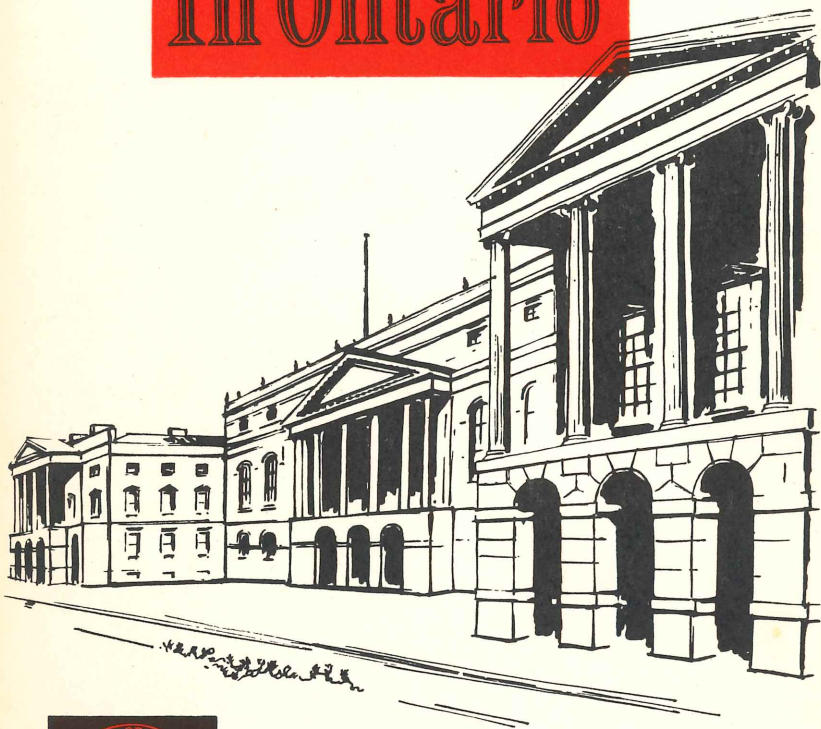


# Legal Aid

# In Ontario



THE LAW SOCIETY OF UPPER CANADA

## **IMPORTANT—INSTRUCTIONS TO COUNSEL**

### **CRIMINAL CASES:**

1. Do not order or pay for a transcript of evidence on the preliminary hearing.  
See General Instructions p. 14, Evidence.
2. Do not retain expert witnesses — medical or otherwise — without approval. See General Instructions p. 13, Experts.

### **ALL CASES—APPEALS**

Legal Aid does not include Appeals.

See Regulations p. 11, paragraph 6 (8).

## FOREWORD

The passage of the Law Society Amendment Act (1951) enabled the Law Society to put into operation its plan of free Legal Aid for needy persons in Ontario, thereafter known as the Ontario Legal Aid Plan. Since that time many thousands of persons have received legal aid in various forms. At present it would be difficult to point to any place in Ontario where a person must go without legal advice or assistance because of lack of funds.

The success of the Plan is due in part to the generous assistance of the Departments of the Attorney General and Reform Institutions of the Ontario Government, and is the result of the combined efforts of the sheriffs and other court officials, the County Law Associations, and the volunteer counsel who staff the clinics and the panels.

The Law Society is grateful for the co-operation of all concerned. This booklet has been prepared in the hope that it may assist in this important work.



Osgoode Hall  
Toronto, June, 1957

W. EARL SMITH  
*Provincial Director*

## **THE ONTARIO LEGAL AID PLAN**

The Law Society Amendment Act (1951) enabled the Benchers to establish the Plan, to make regulations for its operation, and to set up "The Legal Aid Fund" as its financial basis. By the same amendment the Treasurer of Ontario was enabled to remit Crown fees paid in Legal Aid proceedings.

The Plan was put into operation in 1951 by the Law Society in co-operation with the County and District Law Associations.

Regulations were drawn and adopted by the Benchers, and in their present form are set out hereafter. Briefly, they provide for a Provincial Director appointed by the Law Society, who has general supervision of the Plan; County and Local Directors appointed by the Provincial Director in consultation with the County Bar Associations, and for Legal Aid Clinics, as necessary, in each County. A person seeking Legal Aid applies to the County or Local Director, or to the Legal Aid Clinic in the County where he resides if one has been established.

### **Eligible Persons**

A person is eligible for legal aid who has insufficient capital to pay for legal services and, if single, an annual income of less than \$1200.00 or, if married, an annual income of less than \$1800.00 (plus \$200.00 for each dependent). A person not so qualified may still be eligible for Legal Aid where requiring him to pay legal fees would impair his ability to furnish the essentials of living for himself and his family, or where

a matter is urgent for the preservation of his legal rights.

Where eligibility is established, and something more than on-the-spot advice is required, the case is assigned to a lawyer whose name appears on a panel of volunteers offering their services without charge for legal aid cases. The lawyer thereafter takes all necessary proceedings to their conclusion — the same proceedings that would be taken if the applicant were able to pay for them. It is notable that in many Counties the entire Bar has volunteered for Legal Aid work.

## **Referrals**

It sometimes happens that a person applies for Legal Aid who is able to pay a small fee, part only of the fee that would be usual and proper in the circumstances. Such an applicant is referred to a panel lawyer on that basis, but any difference between the normal fee and the amount paid is again made up by the lawyer's contributing his services without charge.

In most Legal Aid cases, however, the client is unable to pay any fee at all. His rights are not jeopardized by his lack of means, but are asserted, or maintained, with neither any charge to him nor fee to the lawyer.

## **Exceptions to Legal Aid**

There are some matters for which legal aid is not available. These are set out in Regulation 6. Thus, it is not normally available for either civil or criminal



appeals (although recently the Provincial Director authorized an appeal against the sentence of a 19-year-old boy sentenced to fourteen years for wounding) and in criminal matters it is available only in respect of the more serious offences ("indictable"), punishable by imprisonment.

Since the inception of the Ontario Legal Aid Plan, legal aid has been given to an average of 3000 persons per year. It has been given in a wide variety of civil matters, and to persons charged with serious criminal offences ranging from escape from prison to murder. In fact, since the inception of the plan legal aid has been given to 57 persons charged with murder. While legal aid normally involves only Ontario lawyers and Ontario Courts, an interesting exception was mentioned by the Provincial Director in his report for 1954, as follows:

"Perhaps the most dramatic case during the past year is that of a foreign born applicant charged with murder. On his first trial he was defended under the Legal Aid Plan, was convicted and sentenced. An appeal was taken, not under the Legal Aid Plan, but by his counsel with the assistance of several members of the profession in Toronto. On the appeal a new trial was ordered, and evidence on commission was taken in Finland. A member of the Department of the Attorney-General represented the Crown on the commission, and the accused through the Ontario Legal Aid Plan was represented by counsel from London, England. On the second

trial the accused was again convicted, but on representations from counsel, both here and in England and almost everyone connected with the trial, the penalty was commuted to life imprisonment."

Legal Aid files reveal the sometimes remarkable extent to which it is assisting the needy. For instance, in one divorce action, both the plaintiff and the defendant were represented by Legal Aid counsel, and in at least three cases, Legal Aid has paid the disbursements and provided counsel for two criminal trials of the same person on the same charge.

In a typical case a 38-year-old woman visited a Legal Aid Clinic to ask for assistance. Her husband had been killed by an automobile, leaving her with virtually nothing and a 2½ year old child to support. In the past twelve months she had earned only \$500.00. The case was referred to a firm of panel lawyers specializing in motor accident law and eventually was settled for \$5,000.00 and costs. Of the costs received the lawyers paid the disbursements incurred, and turned over the balance to the Legal Aid Fund. \$1,000.00 was paid to the widow and \$4,000.00 into Court for her child. The lawyers of course received no fee.

The Ontario Legal Aid Plan depends, in the last analysis, on the willingness of lawyers to volunteer their services without charge. It should not be forgotten that before the Plan was ever introduced, or considered, Ontario's lawyers gave untold free assistance to the needy. That tradition continues. No inter-

ference with this personal "legal aid" was intended by the Legal Aid Plan — the Plan was rather a way of extending such assistance to those cases which without some such organization would not have been discovered.

The above is a summary of how Legal Aid works. For those engaged on Legal Aid work, the Regulations and some suggestions are set out on the following pages.

## **REGULATIONS OF THE LEGAL AID COMMITTEE**

1. The plan shall be known as THE ONTARIO LEGAL AID PLAN.

### **2. ADMINISTRATION**

The plan shall be administered by —

(a) A Provincial Director who shall be the Secretary of the Law Society of Upper Canada, or such other person as may be appointed by Convocation.

(b) A County Director to be appointed in each County by the Provincial Director after consultation with the County Association.

(In these Regulations the word "County" shall include "District").

(c) A Local Director, or Local Directors as may be necessary throughout the County, to be appointed by the County Director after consultation with the County Advisory Committee.



(d) A County Advisory Committee of not less than three members to be appointed by each County Law Association from its own members, to assist and advise the County Director.

(e) Legal Aid Clinics to be established in such centres as may be considered desirable by the County Director after consultation with the County Advisory Committee.

(f) The Provincial Director may settle any forms necessary for the proper administration of the plan, including a form to be signed by all applicants for legal aid.

### 3. **ELIGIBLE PERSONS**

The following persons shall be eligible for legal aid —

(a) Any person certified by a public or private welfare authority or Society as coming within the terms of paragraph (b) hereof.

(b) Any unmarried person having annual earnings or other means of subsistence of less than \$1200.00, and any married person having annual earnings or other means of subsistence of less than \$1800.00, together with an additional amount of \$200.00 for each dependent, and having insufficient disposable capital to pay for legal services.

(c) Where, although not qualified under (a) and (b) above, in the opinion of the Provincial Director on recommendation of the County Director the applicant, if required to pay for legal services, would impair his ability to furnish himself and his family

with the essentials necessary to keep them decently fed, clothed, sheltered and living together as a family.

Where a matter is urgent for the preservation of the legal rights of an applicant, legal aid may be extended on the recommendation of the County Director, but shall be referred to the Provincial Director as above, and may be terminated.

#### **4. LEGAL AID CLINICS AND DIRECTORS**

The functions of the Legal Aid Clinics, or where no clinic is established, of the County Director or of a Local Director, shall be :

- (a) To determine the eligibility of the applicant for legal aid;
- (b) To ascertain the nature of the work required to be done by the applicant for legal aid;
- (c) To dispose of those applications —
  - (i) having no merit,
  - (ii) requiring only advice that can be given on the spot;
- (d) To ascertain the extent of the ability of the applicant to pay for the services of a solicitor, cataloguing the applicants as follows :
  - (i) unable to pay anything,
  - (ii) able to pay some compensation for services rendered;
- (e) To report to the Local Director all cases requiring further services of a solicitor.

5. Upon receiving a report from a Legal Aid Clinic, or upon discharging the functions thereof, the County or Local Director shall :

(a) (1) Where eligibility exists, assign the case to a panel lawyer and notify the applicant of the name of the solicitor.

(2) Where the applicant is able to pay some fee—

(i) ascertain if the applicant knows a solicitor in whom he has confidence, and if so direct him to the solicitor and inform the solicitor of the circumstances;

(ii) if the applicant does not know a solicitor, refer him to any solicitor on the panel with a report on the case; and in such case any fee paid or costs recovered shall belong to the solicitor.

(b) Report briefly to the Provincial Director on each application for legal aid, and the disposition thereof.

## 6. **EXCLUSIONS**

Legal aid shall not include the following matters:

(1) Proceedings wholly or partly in respect of

(a) defamation

(b) breach of promise of marriage

(c) the loss of the services of a woman or girl in consequence of her rape or seduction

(d) alienation of affections

(e) criminal conversation.

(2) Relator actions.

(3) Proceedings for the recovery of a penalty where the proceedings may be taken by any person and the whole or part of the penalty is payable to the person taking the proceedings.

(4) Proceedings relating to any election.

(5) Proceedings subsequent to judgment for recovery of a liquidated sum.

(6) Proceedings in Bankruptcy subsequent to a Receiving Order or an authorized assignment.

(7) Criminal matters other than indictable offences punishable with imprisonment.

(7a) Criminal matters where the accused has previously been convicted of an offence punishable with imprisonment, unless as to indictable offences punishable with imprisonment the County Director is of the opinion that special circumstances warrant the granting of legal aid.

(8) Appeals, except where in the opinion of the Provincial Director, on the report of a County Director, there appears to have been a miscarriage of justice.

(9) Such other matters as in the opinion of the Provincial Director, on the recommendation of the County Director, should be excluded having regard to the nature of the matter.

## **7. LEGAL AID FUND**

There shall be established a fund known as the Legal Aid Fund to which there shall be deposited —

(a) Such appropriations as may be made by Convocation from time to time.

(b) Any compensation received by a solicitor or any costs recovered in a successful action under the Plan, subject to Section 5 (a) 2 (ii) above.

(c) Any remissions of costs or fees by any public authority.

Out of the Legal Aid Fund there may be advanced to a solicitor necessary disbursements if the Provincial Director is of the opinion after consultation with the County Director that the matter for which disbursements are required comes within the Plan, and that it is reasonable under the circumstances of the case to advance the amount required.

#### **8. CHANGE OF STATUS OF APPLICANT**

(1) Where it comes to the attention of a conducting solicitor that a client is or may be ineligible for legal aid, the solicitor shall forthwith report the facts to the County Director.

(2) If the County Director decides that the client is ineligible, the client shall be notified that the costs of all future proceedings are to be paid for by the client. Until such decision is made, all proceedings shall continue on a legal aid basis.

(3) In the event of the client recovering costs, appropriate division of such costs between the conducting solicitor and the Legal Aid Fund shall be made by the County Director, having regard —

(a) to the stage at which the client was declared ineligible;

(b) the amount of costs recovered;



(c) the amount paid out of the Legal Aid Fund; and in the event of any dispute as to such division, the matter shall be referred to the Provincial Director whose decision thereon shall be final.

#### 9. **LIEN FOR COSTS**

Where costs recovered by the client in any proceedings conducted pursuant to these Regulations are payable under these Regulations to the Legal Aid Fund in whole or in part, the Legal Aid Fund shall have a lien upon such costs to the extent of the amount so payable.

## **GENERAL INSTRUCTIONS**

The following is a summary of the decisions of the Legal Aid Committee and of the arrangements that have been made through the cooperation of various Ontario government departments to facilitate the operation of the Legal Aid Plan.

### **Witnesses**

#### (a) Criminal Cases

On the application of defence counsel the Crown Attorney will place such defence witnesses (other than expert witnesses) as he considers material on the Crown witness sheet. Such witnesses will thereupon be summoned to attend trial and be paid witness fees as if they were Crown witnesses.

#### (b) Experts

In criminal and civil cases expert witnesses may *not* be called by Legal Aid counsel except with the

prior approval of the Provincial Director on the recommendation of the County Director. The fees of such witnesses who are called without such approval will not be paid.

### **Evidence—Do Not Order Transcripts of Evidence**

The Attorney-General, the Honourable A. K. Roberts, Q.C., has agreed that Counsel defending prisoners under the Legal Aid Plan are to receive at Government expense a copy of the evidence taken at all preliminary hearings. All Crown Attorneys have been informed of this arrangement, which came into force in November, 1956.

### **Students-at-Law**

Through the co-operation of the Department of Reform Institutions, students-at-law may interview inmates of the Toronto jail.

Students must carry proper identification for this purpose. A letter from the student's principal on the firm's letterhead certifying his employment with the principal's firm will be sufficient.

### **Costs**

Where proceedings have been taken subsequent to judgment for the recovery of costs for the benefit of the Legal Aid fund, and such costs have been paid into the fund, the solicitor who conducts such proceedings will be allowed his proper fees and disbursements therefor upon submitting an account to the County Director.

## **Fees**

In no Legal Aid proceedings, either civil or criminal, may any counsel or solicitor accept any fee. Regulation 8 governs where a change in the financial circumstances of the applicant for legal aid occurs, or where circumstances come to light showing that the applicant is able to pay a normal fee or part thereof. In such circumstances, counsel must obtain the consent of the County Director under Regulation 8 to remove the proceedings from the free list.

## **Disbursements**

In all cases where disbursements are made, a proper account should be rendered to the County Director. Vouchers should be attached. Compliance with these instructions is important since under the Law Society Amendment Act (1951) Crown fees and charges may be remitted to the Legal Aid fund, and without proper accounts showing Crown fees, the advantage of this provision may be lost.

## **Withdrawal from Defence**

In criminal cases counsel may withdraw from the defence where the accused refuses to accept counsel's advice and where the approval of the County Director has been obtained.

## **Divorce**

Applicants for Legal Aid in divorce proceedings must themselves locate the parties and produce the evidence. Under no circumstances may Legal Aid counsel employ investigators or advertise for parties.

## **INSTRUCTIONS TO CLINIC COUNSEL**

The following is a brief summary of suggested procedure.

1. Ascertain first if applicant is resident within your county. If so, fill in a report form for every applicant to show to whom he is referred, the problem is brief, whether meritorious or refused, and if refused indicate the reason.
2. If meritorious and you recommend reference to a panel lawyer, have applicant wait and consult the Director.
3. If the applicant is able to pay in whole or part and does not know a solicitor, consult the Director.
4. If the application relates to criminal matters, question closely as to ability to pay counsel. Such applicants are usually relatives of the accused or persons on bail, and bail may indicate an ability to pay.
5. **IF IN DOUBT CONSULT THE DIRECTOR.**

TO ASCERTAIN WHO IS THE  
COUNTY DIRECTOR CONSULT  
THE SECRETARY OF THE  
COUNTY LAW ASSOCIATION